

REMARKS/ARGUMENTS

Claims 1, 3-10, 17, 19-26, 33, 35-42 are pending. Non-elected claims 11-16, 27-32, and 43-48 have been cancelled. Claims 2, 18, and 34 have been cancelled as the subject matter of these claims has been incorporated, respectively, into independent claims 1, 17, and 33.

During a telephone conference, Examiner Truong presented a restriction requirement to Applicants' representative, Janaki K. Davda. At that time, a provisional election was made without traverse to prosecute the invention of claims 1-10, 17-26, and 33-42. Applicants are affirming the election of claims 1-10, 17-26, and 33-42. Non-elected claims 11-16, 27-32, and 43-48 have been cancelled.

The Abstract is objected to. Applicants are amending the Abstract to overcome the objection.

The Title is objected to. Applicants have amended the title to overcome the objection.

The Examiner submits that the information disclosure statement filed on January 16, 2007 fails to comply with 37 CFR 1.98(a)(1) and submits that no listing of any documents is present. Applicants respectfully traverse. The following document is listed on the information disclosure statement filed on January 16, 2007:

International Preliminary Examination Report (IPRP), September 28, 2006, for
International Application No. PCT/RU2004/000105.

Applicants respectfully request the Examiner to review and initial this reference. For the Examiner's convenience, we are resubmitting this document in a new information disclosure statement.

Claims 1, 3-5, 17, 19-21, 33, and 35-37 are rejected under 35 U.S.C. 102(e) as being anticipated by McGowen (U.S. Pub. 2003/0140191). Applicants respectfully traverse, but, in order to expedite prosecution, Applicants have amended certain claims.

A prior art reference, in order to anticipate under 35 U.S.C. §102, must not only disclose all elements of the anticipated claim within the four corners of single document, but must also disclose those elements “arranged as in the claim”; this requirement, more accurately understood to mean “arranged or combined in the same way as in the claim,” applies to all types of claims and refers to a need for the anticipatory reference to show all limitations of claim arranged or combined in same manner recited in claim, not merely in particular order. *Net MoneyIN Inc. v. VeriSign Inc.*, 88 USPQ2d 1751 (Fed. Cir. 2008).

Applicants respectfully submit that the McGowan reference does not disclose all elements of amended claims 1, 17, and 33 arranged or combined in the same way as in the claim.

In addition, dependent claims 2, 18, and 34 have been incorporated, respectively, into independent claims 1, 17, and 33. Therefore, the rejection of amended claims 1, 17, and 33 will be discussed with reference to the 35 U.S.C. 103(a) rejection as being unpatentable over McGowen in view of Grun (U.S. Pub. 2004/0107304). Applicants respectfully traverse.

Amended claims 1, 17, and 33 describe receiving, with the filter driver, a path fail notification that at least one of the first network adapter and the data path through the first network adapter has failed; rerouting, with the filter driver, packets directed to the first network adapter to the second network adapter; and changing, with the filter driver, a success status of each packet that had been directed to the first network adapter before the path fail notification was received to a busy status, wherein the change in status causes each packet to be reissued.

The McGowen reference describes that the logic instructions for the failover routine may be executed by the multi-path SCSI class driver (paragraph 63). This does not anticipate, and teaches away from, receiving, *with the filter driver*, a path fail notification that at least one of the first network adapter and the data path through the first network adapter has failed.

The Grun reference describes, in paragraph 42:

The present invention relates to an interface between a channel adapter and a I/O device which allows the I/O device easy access to the services provided by the channel adapter. The channel adapter may be part of an I/O unit that interfaces to one or more host devices via a channel-based switched fabric. The host device may include one or more devices or applications that serve as initiators of data or message transfers between the host device and the I/O unit. The I/O unit receives requests from the initiators via the channel adapter and passes these along to one or more I/O controllers that control I/O devices attached to

the I/O unit. The I/O controllers, also known as targets, use the channel adapter (target channel adapter or TCA) to enable the transfers to the initiators in the host unit. The present invention relates to the interface between I/O controllers and a target channel adapter.

Also, the Grun reference describes, in paragraph 132:

Effect of Receipt: The I/O controller is warned to close all service connections to the TCA. Depending on the controller=s failover strategy, it may also choose to suspend, terminate or re-assign all I/O operations pending for I/O service requests received from that TCA.

Applicants respectfully submit that there is no teaching or suggestion in the Grun reference that *changing, with the filter driver, a success status of each packet that had been directed to the first network adapter before the path fail notification was received to a busy status, wherein the change in status causes each packet to be reissued.*

Thus, amended claims 1, 17, and 33 are not anticipated by the McGowen reference, and amended claims 1, 17, and 33 are not taught or suggested by the McGowen and Grun references, either alone or in combination.

Dependent claims 3-5, 19-21, and 35-37 are not anticipated by the McGowen reference at least by their dependent on independent claims 1, 17, and 33. Dependent claims 3-5, 19-21, and 35-37 are not are not taught or suggested by the McGowen and Grun references, either alone or in combination, at least by their dependent on independent claims 1, 17, and 33.

Claims 7-10, 23-26, and 39-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Infante (U.S. Pub. 2004/0078632). Applicants respectfully traverse, but, in order to expedite prosecution, Applicants have amended certain claims.

A prior art reference, in order to anticipate under 35 U.S.C. §102, must not only disclose all elements of the anticipated claim within the four corners of single document, but must also disclose those elements “arranged as in the claim”; this requirement, more accurately understood to mean “arranged or combined in the same way as in the claim,” applies to all types of claims and refers to a need for the anticipatory reference to show all limitations of claim arranged or combined in same manner recited in claim, not merely in particular order. *Net MoneyIN Inc. v. VeriSign Inc.*, 88 USPQ2d 1751 (Fed. Cir. 2008).

Applicants respectfully submit that the Infante reference does not disclose all elements of amended claims 7, 23, and 39 arranged or combined in the same way as in the claim.

Amended claims 7, 23, and 39 describe determining, with the miniport driver, that the network adapter has failed; and using a callback interface to notify, with the miniport driver, the filter driver that the network adapter has failed (e.g., Specification, paragraph 31).

The Infante reference describes a miniport driver and a filter drive (paragraph 34). The Infante reference also describes, in paragraph 34, a fail over/load balancing filter driver 302. However, the Infante reference does not anticipate the claimed interaction of the miniport driver and the filter driver. Moreover, the Infante reference describes in paragraph 28, driver 103 provides multiple path fail over, fail back and/or load balancing, and describes in paragraph 44, Fail over and fail back between paths may be handled entirely by the driver 103. Because the driver 103 handles fail over and fail back "entirely", there is no need in the Infante reference for the miniport driver to determine that the network adapter has failed and to use a callback interface to notify the filter driver that the network adapter has failed.

Thus, the Infante reference does not anticipate, and teaches away from, amended claims 7, 23, and 39.

Dependent claims 8-10, 24-26, and 40-42 are not anticipated by the Infante reference at least by their dependent on independent claims 7, 23, and 39.

Claims 6, 22, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowen in view of Goodwin (U.S. Pub. 2005/0185789). Applicants respectfully traverse.

The Goodwin reference does not cure the defects of the McGowen reference with respect to amended claims 1, 17, and 33. For example, the Goodwin reference and the McGowen reference, either alone or in combination, do not teach or suggest the subject matter of amended claims 1, 17, and 33. Dependent claims 6, 22, and 38 are not taught or suggested by the McGowen and Goodwin references, either alone or in combination, at least by their dependent on independent claims 1, 17, and 33.

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Conclusion

For all the above reasons, Applicants submit that the pending claims are patentable.
Should any additional fees be required beyond those paid, please charge Deposit Account No. 50-0585.

The attorney of record invites the Examiner to contact her at (310) 553-7973 if the Examiner believes such contact would advance the prosecution of the case.

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